

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

---

UNITED STATES OF AMERICA, for  
the use of SIERRA CANYON  
CONSTRUCTION, LLC, a New Mexico  
Corporation,

Plaintiff,  
vs.

MARKEL INSURANCE COMPANY, an  
Illinois Corporation,

Defendant/Cross-Defendant,  
and SIEMENS ENERGY, INC., a  
Delaware Corporation,

Defendant/Cross-Claimant.

No. 1:21-cv-00974-PJK-SCY

---

ORDER

---

THIS MATTER comes on for consideration of pending motions. Upon  
consideration thereof,

(1) Siemens Energy, Inc.'s (Siemens) Motion for Summary Judgment filed June 22, 2022 (ECF No. 39), is granted because Plaintiff Sierra Canyon Construction, LLC (Sierra) has recovered in full on its breach of contract claims from Defendant/Cross-Defendant Markel Insurance Company (Markel), and therefore may not pursue an unjust enrichment claim against Siemens. Sierra's unjust enrichment claim, later assigned to

Markel, is not viable given the legal remedy. See ECF No. 29, at 3–4; Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co., 407 F.3d 1091, 1117 (10th Cir. 2005); Sims v. Sims, 930 P.2d 153, 159 (N.M. 1996). It is of no moment that Markel believes that it had defenses to the contract claim; Sierra may not recover twice. Siemens has established that “there is no genuine issue as to any material fact and [it] is entitled to judgment as a matter of law” on Sierra’s unjust enrichment claim. See Fed. R. Civ. P. 56(a).

(2) Sierra Canyon Construction, LLC’s and Markel Insurance Company’s Joint Motion to Substitute Parties filed June 20, 2022 (ECF No. 37), is denied because Sierra’s unjust enrichment claim against Siemens is barred as a matter of law, and it would be futile to have Markel replace Sierra to pursue a barred claim.

(3) Markel Insurance Company’s Motion to Consolidate filed June 20, 2022 (ECF No. 38), is granted as Siemens consents now that its motion for summary judgment has been granted. ECF No. 40, at 2. All that remains is Siemens’s cross-claim against Markel, and that should be consolidated into Siemens Energy, Inc. v. Markel Ins. Co. No. 1:21-cv-01063-KWR-KK (originally filed September 1, 2021, in the Eastern District of Virginia and transferred to this District on November 11, 2021). The cases involve common questions of law or fact regarding various agreements and conduct in connection with a construction project in Los Alamos, New Mexico. See Fed. R. Civ. P. 42(a)(2).

IT IS SO ORDERED.

DATED this 20th day of July 2022, at Santa Fe, New Mexico.

/s/ Paul Kelly, Jr.  
United States Circuit Judge  
Sitting by Designation